

## Department of Health and Human Services

## § 99.33

exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

### § 99.26 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters at issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

### § 99.27 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

### § 99.28 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision, shall constitute the exclusive record for decision.

## Subpart D—Posthearing Procedures, Decisions

### § 99.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law. The pre-

siding officer shall also fix the time for reply briefs, if permitted.

### § 99.32 Decisions following hearing.

(a) If the Assistant Secretary is the presiding officer, the Assistant Secretary shall issue the decision within 60 days after the time for submission of posthearing briefs has expired.

(b)(1) If the presiding officer is not the Assistant Secretary, the presiding officer shall certify the entire record, including the recommended findings and proposed decision, to the Assistant Secretary within 60 days after the time for submission of posthearing briefs has expired. The Assistant Secretary shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days of receipt of the recommended findings and proposed decision, file exceptions and a supporting brief or statement with the Assistant Secretary.

(3) The Assistant Secretary shall thereupon review the recommended decision and, within 45 days after the receipt of the exceptions to the recommended findings and proposed decision, issue the decision.

(c) The decision of the Assistant Secretary under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704. The Assistant Secretary's decision shall be promptly served on all parties, and amici, if any.

### § 99.33 Effective date of Assistant Secretary's decision.

If, in the case of a hearing pursuant to § 98.18(b) of this chapter, the Assistant Secretary concludes that a Plan amendment does not comply with the Federal statutes and regulations, the decision that further payments will not be made to the Lead Agency, or payments will be limited to categories under other parts of the CCDF Plan not affected, shall specify the effective date for the withholding of Federal funds.